IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979
NO. 79-357

JULIA BURLEY THORNLOW,
Petitioner

v.

NORMAN HENRY THORNLOW,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE TEXAS COURT OF CIVIL APPEALS, THIRTEENTH SUPREME JUDICIAL DISTRICT

The petitioner, Julia Burley Thornlow, respectfully prays that a writ of certiorari issue to review the judgment of the Court of Civil Appeals of Texas, Thirteenth Supreme Judicial District, entered on January 25, 1979, which judgment was refused review by the Supreme Court of Texas on June 6, 1979, for want of jurisdiction.

OPINIONS BELOW

The opinion of the Court of Civil Ap-

peals is reported at 576 S.W.2d 697. That opinion and the judgment of the Court of Civil Appeals, and the unreported order of the Texas Supreme Court and judgment of the 197th District Court are set forth in Appendices A, B and C, infra.

JURISDICTION

The jurisdiction of the Texas Supreme Court to review judgments in divorce cases depends in each case upon whether the holding of the court of civil appeals conflicts substantially with a holding by another court of civil appeals on the same legal issue. Articles 1821 and 1728(2), Tex.Rev.Civ.Stat.Ann. (set forth in Appendices E and F, infra) As the determination in each case of whether the necessary conflict of decisions exists is made by the Texas Supreme Court on application for writ of error, an application for writ of error is necessary in order to settle whether, in each particular case, the Texas Supreme Court or the court of civil appeals is the highest court in Texas which could render a decision. In the present case, on application for writ of

error, the Texas Supreme Court refused review of the lower court judgment on June 6, 1979. The jurisdiction of this Court is invoked pursuant to Title 28, U.S.C. Section 1257(3).

QUESTION PRESENTED

WHETHER AN EX PARTE ADJUDICATION DIVIDING CUSTODY OF CHILDREN BETWEEN PARENTS IS PERMITTED BY THE DUE PROCESS CLAUSE WHEN THE NON-RESIDENT MOTHER HAS BEEN DISMISSED AS A PARTY TO THE LITIGATION BECAUSE OF A LACK OF MINIMUM CONTACTS BETWEEN HER AND THE STATE, AND WHEN THE BRIEF TECHNICAL DOMICILE, OR AT LEAST PRESENCE, OF THE CHILDREN WITHIN THE RENDERING STATE IS DUE SOLELY TO UNILATERAL ACTS ON THE PART OF THE RESIDENT FATHER.

STATEMENT OF THE CASE

The parties lived together with their three children in Arizona until May, 1977, when the respondent husband moved by himself to Texas and established a domicile. (Appendix G, infra, pp.1,3,4) On February 14, 1978, the respondent obtained the

petitioner mother's permission to bring the children to Texas for a two-week visit and promised to return them to the petitioner in Arizona. (Appendix G, pp.1-2) Instead, respondent filed this suit for divorce and custody eight days later and refused to return the children to Arizona. (Appendix G, p.2) Neither the petitioner nor the children had ever resided in Texas before. (Appendix G, pp.1,4) Petitioner entered a special appearance objecting to the jurisdiction of the Texas court over her person and over the custody and interests of the minor children. The district court overruled this special appearance and entered judgment granting a divorce and custody to the father and granting the mother visitation rights "that may be agreed upon by the parties." (Appendix A, p.4)

On appeal, the Court of Civil Appeals reversed the ruling on the special appearance as it related to in personam jurisdiction over the mother, due to her lack of minimum contacts with the State of Texas. (Appendix B, pp.7,13,15) Accordingly, the Court of Civil Appeals directed that the mother be dismissed as a party to the

litigation. But, notwithstanding the lack of jurisdiction over the mother, the Court of Civil Appeals found that the district court had "subject matter" jurisdiction to determine the issue of custody because the children were technically domiciled, or at least present, in Texas.

Petitioner's motion for rehearing was overruled by the Court of Civil Appeals on February 15, 1979, and review was refused by the Texas Supreme Court on June 6, 1979. (Appendix C)

REASONS FOR GRANTING THE WRIT

The Thornlow family dispute over child custody, which has resulted in conflicting judgments of Texas and Arizona courts, graphically demonstrates the need for this Court's intervention to eliminate unnecessary and unseemly conflict among the states. The case presents an excellent example of a currently popular method of forum shopping in interstate child custody disputes: snatch the children and run for the state line. That practice is encouraged by the lack of authoritative guidance from this Court as to the minimum

due process requirements for assertion of jurisdiction in interstate child custody conflicts. What happened to the Thornlow family is not, unfortunately, atypical.

For some time the Thornlows and their children had lived in Tucson, Arizona. In May, 1977, the marriage broke up, and the husband moved 1,100 miles away to Brownsville, Texas. Nine months later, on the pretense of taking the children for a two-week visit, Mr. Thornlow brought them to Texas and immediately filed suit for divorce and custody. The Texas Court of Civil Appeals, in affirming a judgment granting custody to the husband, properly decided that Texas did not have personal jurisdiction over the mother, since she had never even been to Texas, but then ruled that her presence was not necessary to adjudicate the issue of the custody of her children. She was dismissed as a party. By implication, the Texas court has advised warring spouses that they need not even give notice to the non-resident spouse before obtaining a custody decree, inasmuch as that foreign spouse is not an essential party to the custody issue as long as one parent and the children are physically

present before the Court.

While the Texas courts were adjudicating custody without jurisdiction over the mother, a court of Arizona, a state with which all parties had abundant contacts, also asserted jurisdiction over the dispute and entered a conflicting judgment awarding custody to the mother (Appendix F, infra). Clearly, Arizona has no intention of enforcing the Texas decree, nor, under the holding of May v. Anderson, 345 U.S. 528 (1952), need Arizona or any other state enforce the Texas decree, since that decree was rendered without personal jurisdiction over the Petitioner. The question is whether the Texas decree is likewise unenforceable in Texas as being obtained in violation of due process of law.

If the Texas decree does not violate due process, the anomalous result is that one judgment is enforceable in forty-nine states and one is enforceable only in Texas. In Hilt v. Kirkpatrick, 538 S.W.2d 849, 852 (Tex.Civ.App.-Waco 1976,) which was relied upon by the Court of Civil Appeals in the present case because of the similarity of facts, the Texas position on this issue was stated as follows:

> In May v. Anderson, 345 U.S. 528, ... and other cases the court held it was not necessary to accord full faith and credit to child support orders where the court lacked in personam jurisdiction over the defendant. However, the court did not hold the orders were void for want of jurisdiction or that they could not be accorded full faith and credit.
> The judgment in question is not void. Undoubtedly it will be recognized by the courts of Texas. Whether another jurisdiction such as Colorado will give full faith and credit is not a question for our decision.

Clearly, then, unless the Texas decree is declared violative of due process and therefore void and unenforceable, the decree will be enforced in Texas.

Accordingly, the issue is whether states are free to render and enforce such ex parte custody decrees against non-resident parents who lack contact with the forum state, merely on the basis of the children's brief technical domicile or physical presence within the forum state.[1] Although

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[1] The Court of Civil Appeals bolstered its determination of custody jurisdiction by reference to "undisputed evidence" of poor care and living conditions in Arizona,

this issue is not new, it has never been directly addressed by this Court, to the dismay of courts and commentators alike. See, e.g., Prefatory Note, Uniform Child Custody Jurisdiction Act; Petition of Giblin, 232 N.E.2d 214 (Minn. Sup. 1975). As the numbers of interstate custody disputes rise in our increasingly mobile society, the need for guidance from this Court regarding the due process requisites for jurisdiction to determine custody becomes correspondingly greater. As was stated by the court in Giblin, supra, at 216, "...the situation literally cries for attention."

Absent guidance from this Court, non-resident parents risk deprivation of the protections which are mandatory for non-

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which in the Court of Civil Appeals' opinion justified taking jurisdiction to protect the welfare of the children. The entire testimony of the Respondent father during the hearing on the Petitioner's special appearance is included in Appendix G, infra. This testimony, plus a stipulation that the mother had never resided in Texas, but that the father had resided in Texas and the children had been physically present in Texas since February 14, 1978, constitutes all of the evidence placed before the Court of Civil Appeals.

resident defendants in more settled classifications of jurisdiction. State courts may not assert jurisdiction, whether classified as in personam, in rem, or quasi in rem, against non-resident defendants unless the jurisdiction is based upon minimum contacts between the defendant, the forum and the litigation. Shaffer v. Heitner, 433 U.S. 186 (1977). To accord due process to the non-resident defendant, these contacts must be sufficient to satisfy traditional notions of fair play and substantial justice in requiring the defendant to appear and defend against litigation in a distant forum. id.

Application of the ruling of Shaffer to domestic relations law resulted in a ruling that the obligation to pay child support, like other debts, requires in personam jurisdiction over the defendant. The non-resident parent who lacks contacts with the forum State is therefore protected against ex parte support determinations. Kulko v. California Superior Court, 436 U.S. 84 (1978). See also, Vanderbilt v. Vanderbilt, 354 U.S. 416 (1957).

But the same notions of fair play and substantial justice do not protect a non-

resident parent from an ex parte custody determination in Texas. The right of a non-resident parent to custody of her children, although recognized in May v. Anderson, supra, at 533, 534, as a personal right which is "far more precious...than property rights" and "entitled to at least as much protection as her right to alimony," is unprotected, even disregarded, in Texas. The non-resident parent who lacks contacts with Texas regarding the custody dispute is summarily dismissed as a party to the litigation. That practice demonstrates the need for a ruling by this Court defining the minimum due process requirements for jurisdiction to determine custody between parents.

If the custody decree in the present case does not violate due process, parents throughout the country are entitled to be so warned before they unwittingly allow their children to visit in states such as Texas. If the custody decree does violate due process because rendered without jurisdiction, it is important that this Court so hold, thereby freeing the Petitioner, her children, and countless other parents and children from the limbo in which they now

exist through no acts of their own.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari, should be granted.

Respectfully submitted,

SUSAN REES WILLIAMS
DAVID GRAY HALL
Texas Rural Legal Aid, Inc.
103 East Third Street
Weslaco, Texas 78596

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Susan Rees Williams, do hereby certify that I mailed three (3) true and correct copies of the foregoing Petition for Writ of Certiorari, with first-class postage prepaid, addressed to Joe Walsh & Associates, Attorneys of record for Respondent, 1050 East Madison Street, Brownsville, Texas 78520, on this the 4th day of September, 1979.

SUSAN REES WILLIAMS

APPENDIX

APPENDIX A

NO. 78-344-C

IN THE MATTER OF THE MARRIAGE OF NORMAN HENRY THORNLOW AND JULIA BURLEY THORNLOW AND IN THE INTEREST OF MIRANDA COLES , NORMAN HENRY JR. and HEATHER ALISON THORNLOW, CHILDREN	IN THE DISTRICT COURT CAMERON COUNTY, TEXAS 197TH JUDICIAL DISTRICT

DECREE OF DIVORCE

On the 12th day of May, 1978, came on the above-entitled and numbered cause for final hearing, and the Petitioner, NORMAN HENRY THORNLOW, having appeared in person and by his attorney of record and announced ready for trial, and came on Respondent, appearing through her attorney of record, on her motion contesting the jurisdiction of this Court over the custody and conservatorship and interests of the minor children of this marriage, and the Court

then proceeding to hear Respondent's argument on her motion contesting the jurisdiction of this Court, made through her pleadings making a special appearance only to present motion to the jurisdiction of this Court, and the Court having taken same under advisement, and the Court then having heard the evidence and testimony presented by Petitioner on the merits and having examined the pleadings and heard argument of counsel, and being of the opinion that all necessary residence qualifications and prerequisites of law have been legally satisfied, and a jury having been waived, and all matters in controversy including questions of fact and of law, having been submitted to the Court and that all persons being entitled to citation were properly cited, and after taking the matter of the jurisdiction of the minor children of this marriage under consideration and considering the briefs filed herein by counsel for Petitioner and Respondent and being of the opinion that this Court has, and should exercise, jurisdiction as to the divorce and child custody emanating from the divorce, the Petitioner, NORMAN HENRY

THORNLOW, should be named and appointed Managing Conservator;

IT IS ORDERED that Respondent's motion contesting the jurisdiction of this Court over the children of this marriage for purposes of conservatorship be, and the same is hereby denied in all things.

IT IS DECREED that NORMAN HENRY THORNLOW, Petitioner, and JULIA BURLEY THORNLOW, Respondent, be and they are hereby divorced.

The Court finds that the parties are not now expecting another child of the marriage and that Petitioner and Respondent are the parents of the following children now under 18 years of age:

NAME: MIRANDA COLES THORNLOW
SEX: Female
BIRTHPLACE: Columbia, South Carolina
BIRTHDATE: July 4, 1973
PRESENT RESIDENCE: With Petitioner

NAME: NORMAN HENRY THORNLOW, JR.
SEX: Male
BIRTHPLACE: Columbia, South Carolina
BIRTHDATE: December 30, 1974
PRESENT RESIDENCE: With Petitioner

NAME: HEATHER ALISON THORNLOW
SEX: Female
BIRTHPLACE: Tucson, Arizona
BIRTHDATE: March 11, 1977
PRESENT RESIDENCE: With Petitioner

The Court, having considered the circumstances of the parents and of the children, finds that the following orders are in the best interest of the children:

IT IS DECREED that NORMAN HENRY THORNLOW be and is hereby appointed Managing Conservator of the children.

IT IS DECREED that the Managing Conservator shall have all the rights, privileges, duties, and powers of a parent, to the exclusion of the other parent, subject to the rights, privileges, duties, and powers granted to any Possessory Conservator named in this decree.

IT IS DECREED that JULIA BURLEY THORNLOW be and is hereby appointed Possessory Conservator of the children.

IT IS DECREED that the Possessory Conservator shall have reasonable visitation rights at reasonable times that may be agreed upon by the parties.

The Court finds that no community pro-

perty other than personal effects has been accumulated by the parties.

IT IS DECREED that the property of the parties be and is hereby awarded to the party having possession of such property.

All costs of Court expended in this cause are adjudged against Petitioner, for which let execution issue.

IT IS DECREED that all relief requested in this cause and not expressly granted herein be and is hereby denied.

SIGNED this 30th day of June, 1978.

DARRELL HESTER
JUDGE PRESIDING

APPENDIX B

OPINION OF THE TEXAS COURT OF CIVIL APPEALS

NUMBER 1412

IN THE COURT OF CIVIL APPEALS

FOR THE THIRTEENTH JUDICIAL DISTRICT OF

TEXAS

SITTING AT CORPUS CHRISTI, TEXAS

* * * * * * * * * * * * * * * * * *

JULIA BURLEY THORNLOW,

Appellant,

V.

NORMAN HENRY THORNLOW,

Appellee.

* * * * * * * * * * * *

On appeal from the 197th District Court of Cameron County.

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O P I N I O N

This is an appeal from the denial of a Rule 120a, T.R.C.P., special appearance in an interstate divorce and child custody suit.

Appellant, Julia Burley Thornlow, and appellee, Norman Henry Thornlow, were married on August 22, 1970. They had three children, none of whom were born in Texas. For some period of time prior to May of 1977 the parties resided together with their children in Tucson, Arizona. Appellee separated from appellant and the children in May of 1977 after appellant told the appellee to leave. He then moved to Brownsville, Texas, and there established his domicile. Appellee apparently offered to send support money to appellant but appellant's boyfriend said that he would support appellant and the children.

Later, during Christmas of 1977, appellee visited the appellant and the children, and while there bought food, presents and necessities for the family. On February 14, 1978, appellee returned to Arizona again and made an agreement with his wife that if she would allow him to take the children to Brownsville he would return them to Tucson in two weeks. The appellee never intended to return the children because appellant was subjecting them to unsuitable living conditions and was failing to properly care for them. Whereupon appellee transported the children to Brownsville, and on February 22, 1978, he filed a petition for divorce alleging an insupportable marriage and adultery. He also requested custody of the three children. Appellant was served with process in Arizona. She had never resided in Texas.

On April 20, 1978, appellant filed a petition in Arizona for divorce and custody of the children. At the time of the trial herein, that proceeding was still pending.

The hearing on the special appearance motion and the trial were held on May 12, 1978. The appellee, the only witness called to testify, stated that the child-

ren, then ages 5, 3, and 1, continued to reside with him in Brownsville, Texas; that he had established the children's domicile in Texas; and that since he had left Tucson with the children in February, he had not heard from the appellant.

At the hearing the trial court heard only argument on appellant's special appearance motion but received evidence on the divorce and custody suit. The court granted the divorce and appointed appellee managing conservator and appellant possessory conservator with reasonable visitation rights regarding the children. The court also found that no community property other than personal effects had been accumulated by the parties. It decreed that the personal effects should be awarded to the party having possession of such property.

Appellant brings two points of error alleging that the trial court did not have personal jurisdiction over the appellant or jurisdiction over the subject matter of the suit.

In contesting the court's jurisdiction under Rule 120a, T.R.C.P., the appellant had the burden of pleading and proving that

she was not amenable to the process issued by the courts of Texas. Scott v. Scott, 554 S.W.2d 274, 277 (Tex.Civ.App.--Houston [1st Dist.] 1977, no writ); Hoppenfeld v. Crook, 498 S.W.2d 52 (Tex.Civ.App.--Austin 1973, writ ref'd n.r.e.).

In regard to this burden, appellant appeared at the trial only by attorney and her attorney did not present any witnesses. The appellee testified, however, and we must evaluate his evidence in connection with the appellant's burden. Hoppenfeld v. Crook, supra.

Findings of fact and conclusions of law were neither requested nor filed. Thus all questions of fact are presumed found in support of the judgment and the judgment must be affirmed if it can be upheld on any legal theory that finds support in the evidence. Lassiter v. Bliss, 559 S.W.2d 353, 358 (Tex.Sup. 1978).

The facts and argument presented by the case at bar are closely similar to those in Hilt v. Kirkpatrick, 538 S.W.2d 849 (Tex. Civ.App.--Waco 1976, no writ). In Hilt, the parties were divorced in Colorado in 1968. The court granted custody of their two children to the wife and certain visit-

ation rights to the husband. In 1969 the wife moved to Texas with the children and established their domicile. In 1975 the wife sued in Texas to modify the Colorado custody decree, i.e., to further reduce the visitation rights of the father. The father who apparently still lived in Colorado filed a special appearance under Rule 120a, T.R.C.P. The trial court denied the special appearance and granted the wife's request. On appeal, however, the Court of Civil Appeals held that the special appearance should have been sustained under the principles of May v. Anderson, 345 U.S. 528 (1953) and Mitchim v. Mitchim, 518 S.W.2d 362 (Tex.Sup. 1975). But the court went on to hold that the State's interest in children domiciled and physically present in the State gave the Texas court sufficient jurisdiction to adjudicate custody. As a result, the court sustained the special appearance, dismissed the appellant from the case and affirmed the orders of the trial court.

We find the facts in our case compellingly similar. Just as in Hilt, the appellant herein has never resided in Texas either by herself or with her husband, and

none of the children were born in Texas. We too find an absence of the requisite "minimum contracts" with the State of Texas with respect to the custody of the children to satisfy traditional notions of fair play and substantial justice. Furthermore, we find no additional grounds which are contained in the Texas parent-child long-arm statute, Tex.Fam.Code Ann. §11.051 (Supp. 1978), which can confer personal jurisdiction over the out-of-state appellant. We reach this conclusion in spite of the fact that the appellant did give the children permission to come to Texas for a two-week visit. We hold this was insufficient to invoke subdivision (2) of the long-arm statute. See Sampson, Jurisdiction in Divorce and Conservatorship Suits, 8 Tex.Tech L. Rev. 159, 200-205 (1976). The appellant's special appearance (point of error 2) should be sustained.

We do not agree, though, that the trial court lacked subject matter jurisdiction. It is well settled that a Texas court may assert jurisdiction over the custody of a child who is domiciled in the state or one who is physically present in the state. Ex Parte Birmingham, 244 S.W.2d 977 (Tex.Sup.

1952); Wicks v. Cox, 208 S.W.2d 876 (Tex. Sup. 1948); Davis v. Spraggins, 449 S.W.2d 80 (Tex.Civ.App.--Amarillo 1969, writ ref'd n.r.e.). In this connection, and similar to the Hilt determination, we find two bases which justify the court's exercising jurisdiction in the instant case.

First, the evidence supports the trial court's implied finding that the children herein were domiciled in Texas with the appellee at the time the suit was instituted; that Texas had a real interest in the children's welfare; and that this alone confered subject matter jurisdiction upon the court. Peacock v. Bradshaw, 194 S.W.2d 551, 556 (Tex.Sup. 1946); Hilt v. Kirkpatrick, supra. This determination is based upon the testimony that the parties were not divorced and no divorce suit had been filed at the time appellee brought the children to Texas. Accordingly, appellee's right to custody of the children was equal to that of the appellant. Minjarez v. Minjarez, 495 S.W.2d 630 (Tex.Civ.App. --Amarillo 1973, no writ), Tex.Fam.Code Ann. §12.04 (1975). As a rightful custodian, he was entitled to transport the children to Texas and to establish their

domicile in this State. Everson v. Boydston, 377 S.W.2d 117 (Tex.Civ.App. --El Paso 1964, no writ). See also Tex.Fam.Code Ann. §11.04 (1975). Moreover, appellant introduced no evidence which would indicate that the children were not domiciled in Texas or that Texas did not have a justifiable interest in the children's welfare. Compare Everson v. Boydston, supra at 119.

Second, even if the children were not domiciled in Texas, the children's physical presence before the court would justify the court's subject matter jurisdiction. This concept also incorporates the broad consideration of the welfare of children and the duty of the state to look after the welfare of the individuals within its borders. In this regard, the children's best interest is the primary issue. Wicks v. Cox, supra at 208; Worden v. Worden, 224 S.W.2d 187, 190 (Tex.Sup. 1949); Everson v. Boydston, supra. The state in which the child is a resident should exercise jurisdiction if it is in a more or less equally good position as compared to the domiciliary state to determine the child's best interest and doing so will not prejudice good order or social welfare. Wicks v.

Cox, supra at 878.

It is evident from the facts herein that Texas would be justified in invoking its custody jurisdiction for the protection and welfare of the children. It is undisputed that in Tucson the children were living in poor conditions and were not being cared for. We hold these facts sufficient to invoke the trial court's jurisdiction to insure the welfare of the children. As far as the relative capability of Texas' courts to decide the children's best interests is concerned there is no evidence that Arizona would be a better forum for this determination than Texas. The only evidence of the length of the children's stay in Arizona is contained in the appellee's pleading. It states only that the youngest child was born in Arizona in March of 1977. Consequently, the children lived in Arizona possibly less than a year, and Arizona might have evidence concerning appellee's fitness as a father for a period of only two to three months. At the time the appellee filed this suit, he had lived in Brownsville over six months. Furthermore, Texas is better able to evaluate the character and resources of the appellee as well

as other local circumstances bearing on the kind of life the children might lead if custody were awarded to the appellee. Compare Wicks v. Cox, supra. Thus, we find Texas is in at least as good a position as Arizona to determine the children's best interests.

Additionally, we find no serious prejudice to good order in the Texas court's taking jurisdiction. While we do not condone the use of deception to gain possession of children, the appellee retained an equal right to custody of the children at the time he brought them to Texas. The father's ruse should not be charged to the detriment of the children, but the Texas court should take jurisdiction to promote the children's welfare. Compare Wicks v. Cox, supra at 879-880; Dunn v. Tiernan, 284 S.W.2d 754, 758 (Tex.Civ.App.--El Paso 1955, writ ref'd n.r.e.); White v.White, 77 N.H. 26, 86 A 353 (1913) (cited with approval in Wicks v. Cox, supra at 878). Accordingly, we find the trial court possessed jurisdiction to determine the children's custody.

Appellant, however, cites several cases, one of which is Bevan v. Bevan, 283 S.W.2d

305 (Tex.Civ.App.--San Antonio 1955, writ ref'd n.r.e.), for the proposition that Arizona should be chosen as a better forum to determine custody. We do not agree. These cases are distinguishable, in that they involved situations in which suits involving the custody of the children were pending in foreign courts when the Texas suits were initiated for custody of the children. The rational underlying Bevan and the other cases was that it would encourage disorderly processes to accept jurisdiction when another court has active jurisdiction. No other court had custody jurisdiction when this suit was filed. Therefore, appellant's cases do not control.

Appellant also contends the trial court did not have jurisdiction to grant the parties a divorce. We disagree again. The evidence supports the court's implied finding that the appellee was domiciled in Texas, and even though the spouses were domiciled in different states the Texas court, where suit was filed, had jurisdiction to alter the status of their marriage relationship without "in personam" jurisdiction of the absent spouse.

Williams v. North Carolina, 325 U.S. 226 (1945) Williams v. North Carolina, 317 U.S. 287 (1942); Dosamantes v. Dosamantes, 500 S.W.2d 233 (Tex.Civ.App.--Texarkana 1973, writ dism'd), see also Mitchim v. Mitchim, 518 S.W.2d 362, 364 (Tex.Sup. 1975). In addition, the Texas court possessed jurisdiction to divide the property located in Texas. Fox v. Fox, 559 S.W.2d 407 (Tex.Civ.App.--Austin 1977, no writ). We find no evidence that any of the property awarded to the appellee was outside Texas at the time of the divorce and thus we find no reversible error in the trial court's division of the property.

Accordingly, appellant's point one challenging the subject matter jurisdiction of the suit is overruled. Appellant's point two contesting the personal jurisdiction over the appellant is sustained and the order overruling the special appearance is reversed, and judgment is here rendered dismissing the appellant from this cause. In all other respects the judgment of the trial court is affirmed.

HORACE S. YOUNG
Associate Justice

Opinion delivered and filed this the 25th

day of January, 1979.

COURT OF CIVIL APPEALS
Thirteenth Supreme Judicial District
Corpus Christi, Texas

Below is the JUDGMENT in the numbered cause set out herein to be Filed and Entered in the Minutes of the Court of Civil Appeals, Thirteenth Supreme Judicial District of Texas, at Corpus Christi, as of the 25th day of January, 1979. If this Judgment does not conform to the opinion handed down by the Court in this cause, any party may file a Motion for Correction of Judgment with the Clerk of this Court.

CAUSE NO. 1412 (Tr. Ct. #78-344-C)
JULIA BURLEY THORNLOW Appellant
vs.
NORMAN HENRY THORNLOW Appellee

on appeal to this Court from Cameron County, Texas.

* * * * * * * * * * * * * *

J U D G M E N T

On appeal from the 197th District Court of Cameron County Opinion by Associate Justice Horace S. Young.

THIS CAUSE was submitted to the Court on November 29, 1978, on oral argument, briefs and transcript of the record. These having been examined and fully considered, it is the opinion of the Court that there was error in the judgment of the court denying appellant's special appearance. Accordingly, judgment is REVERSED and here RENDERED dismissing appellant from this cause. Those portions of the trial court judgment which granted the divorce, appointed conservatorships for the children, and divided the property in Texas are AFFIRMED.

It is further ordered that all costs of appeal are adjudged against the appellee, Norman Henry Thornlow, and this decision be certified below for observance.

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Shirley Selz, Clerk

APPENDIX C

IN THE SUPREME COURT OF TEXAS

AUSTIN

NO. B-8331

JULIA BURLEY THORNLOW		
VS.		From Cameron County,
NORMAN HENRY THORNLOW		Thirteenth District.

Application of petitioner for writ of error to the Court of Civil Appeals for the Thirteenth Supreme Judicial District, as well as respondent's motion to dismiss said application having been duly considered by the Court, it is ordered that the motion to dismiss be, and hereby is, granted, and accordingly, the application is dismissed.

It is further ordered that applicant, Julia Burley Thornlow, pay all costs incurred on this application.

APPENDIX D

Article 1821 Judgment Conclusive On Law

Except as herein otherwise provided, the judgments of the Courts of Civil Appeals shall be conclusive on the law and facts, nor shall a writ of error be allowed thereto from the Supreme Court in the following cases, to wit:

1. Any civil case appealed from the County Court or from a District Court, when, under the Constitution a County Court would have had original or appellate jurisdiction to try it, except in probate matters, and in cases involving the Revenue Laws of the State or the validity or construction of a Statute.
2. All cases of slander.
3. All cases of divorce.
4. All cases of contested elections of every character other than for State officers, except where the validity of a Statute is questioned by the decision.
5. In all appeals from interlocutory orders appointing receivers or trustees, or such other interlocutory appeals as may be allowed by law.

6. In all other cases as to law and facts except where appellate jurisdiction is given to the Supreme Court and not made final in said Courts of Civil Appeals.

It is provided, however, that nothing contained herein shall be construed to deprive the Supreme Court of jurisdiction of any case brought to the Court of Civil Appeals from an appealable judgment of the trial court in which the judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision, or in which one of the Courts of Civil Appeals holds differently from a prior decision of another Court of Civil Appeals or of the Supreme Court upon a question of law, as provided for in Subdivisions (1) and (2) of Article 1728. Acts 1st C.S.1892, p. 25; Acts 1923, p.110; Acts 1929, 41st Leg., p.68, ch.33, §1; Acts 1953; 53rd Leg., p.1026, ch. 424, §2.

APPENDIX E

Article 1728 Appellate Jurisdiction

The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, extending to all questions of law arising in the following cases when same have been brought to the Courts of Civil Appeals from appealable judgment of trial courts:

1. Those in which the judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision.

2. Those in which one of the Courts of Civil Appeals holds differently from a prior decision of another Court of Civil Appeals or of the Supreme Court upon any question of law material to a decision of the case.

3. Those involving the construction or validity of statutes necessary to a determination of the case.

4. Those involving the revenues of the State.

5. Those in which the Railroad Commission is a party.

6. In any other case in which it is

made to appear that an error of substantive law has been committed by the Court of Civil Appeals which affects the judgment, but excluding those cases in which the jurisdiction of the Court of Civil Appeals is made final by statute. Acts 1892, p. 19; Acts 1913, p. 107; Acts 1917, p. 140; G.L. vol. 10, p. 383; Acts 1927, 40th Leg., p. 214, ch. 144, §1; Acts 1953, 53rd Leg., p. 1026, ch. 424, §1.

APPENDIX F

JAY W. McEWEN
SOUTHERN ARIZONA LEGAL AID, INC. 155 East Alameda
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Attorney for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

In Re the Marriage of	X	
JULIA THORNLOW	X	NO. D21186
Petitioner,	X	
and	X	ORDER
	X	(CHILD
	X	CUSTODY)
NORMAN H. THORNLOW	X	
Respondent	X	

THIS MATTER having come on for hearing before this court, sitting without a jury, Respondent not appearing and Petitioner appearing in person and by her attorney, JAY W. McEWEN, Southern Arizona Legal Aid, Inc., and the court, having heard testimony and having reviewed evidence and being fully apprised in this matter;

The court finds as follows:

1. That a dissolution was granted between the parties by the Court of Cameron County, Texas, on the 30th day of June, 1978, Case No. 78-344-C, and that the Texas court had subject matter jurisdiction over the marriage and division of community property and debts and it is, therefore, unnecessary to proceed on the dissolution, community property and debt aspects of the Petition for Dissolution in this case.

2. That this court is aware of decision No. 1412 of the Texas Court of Civil Appeals, for the Thirteenth Supreme Judicial District of Texas, on the 25th day of January, 1979, regarding custody of the children of this marriage. However, it finds that Arizona is vested with jurisdiction to make a child custody determination, pursuant to A.R.S. §8-403 (formerly A.R.S. §25-331) because Arizona was the children's domicile and the domicile of their mother, the Petitioner, and had been for two years prior to the commencement of this proceeding, and the children had been in Texas for a period of only two weeks at the time proceedings were commenced in that state, and that Arizona asser-

ted jurisdiction over the children on May 15, 1978 at the temporary custody hearing in this case.

3. Arizona has personal jurisdiction over the Respondent, pursuant to Rule 4(e)(2), Arizona Rules of Civil Procedure, for the reason that the parties established their matrimonial domicile in Arizona in September, 1975, and it was their domicile in May, 1977, when Respondent left Petitioner and their children and went to Texas, and for the further reason that by taking the children from this state Respondent caused an event to occur in this state giving rise to personal jurisdiction over him.

Good cause appearing. IT IS ORDERED.

1. That Petitioner have the care, custody and control of the minor children of the parties, MIRANDA C. THORNLOW, NORMAN H. THORNLOW, JR. and HEATHER A. THORNLOW.

2. That Respondent return the three minor children to the Petitioner at Tucson, Arizona, and pay all related expenses.

3. That Respondent be ordered to pay $150.00 per month per minor child as and for child support until said minor child reaches the age of majority and is ordered

to make these payments, along with $1.00 per month for handling costs, to the Clerk of the Pima County Superior Court.

4. That Respondent is ordered to maintain as part of child support, insurance the same as or maintain the present policy: Aetna Life and Casualty, #350060-13-243-28-7544-001.

5. That Respondent is granted visitation with the minor children as follows: One weekend per month in the presence of Petitioner with Respondent giving Petitioner 24 hour notice of his intent to exercise visitation.

6. That Petitioner is restored the use of her former name, to-wit: JULIA P. GREEN.

DONE IN OPEN COURT this 14th day of March, 1979.

GORDON S. KIPPS
COMMISSIONER OF THE SUPERIOR COURT

STATE OF ARIZONA
COUNTY OF PIMA
The foregoing instrument
is a full, true, and

correct copy of the
Original on file in this
office.
Attested 3/14/79
JAMES N. CORBETT, Clerk
BY

_____

APPENDIX G

NORMAN HENRY THORNLOW

was called as a witness and, after having been first duly sworn, was examined and testified as follows (herein set out in narrative form as requested by attorney for Appellant):

THE WITNESS: My name is Norman Henry Thornlow. I reside at Stardust Mobile Home Park, Boca Chica Avenue, Brownsville, Texas. I have lived there for almost one year. This is my domicile and this is where I intend to make my home.

I am married to Julia Thornlow who I assume still lives in Tucson, Arizona. We have three children born of the marriage whose names are Miranda Coles Thornlow, Norman Henry Thornlow, Jr., and Heather Alison Thornlow and those three children are the children of my marriage with Julia Thornlow.

Today they are here with me and they domicile with me. They have lived with me since February 14, 1978. Before that they were in Tucson, Arizona. I went to Tucson to pick up some personal things that were in storage and I asked my wife if she would let me bring my children back and she said

she would for a while, so I brought them back.

The last time I heard from my wife was February 14, 1978, and I haven't heard from her since. After I brought the children back, she has not ever requested for me to bring them back home. I have never heard from her. The children have been living with me since February 14th. I have the care and custody of those children today.

MR. HARWOOD: Pass the witness.

(Testimony elicited from the witness through questions of Mr. Nelson in narrative form.)

THE WITNESS: It was the understanding between myself and my wife that I was to have care and custody of those children for a while. My wife and I had the understanding that that "for a while" was only going to be two weeks.

On February 22, 1978, I filed this petition for divorce. I never had any intention of returning those children to my wife after I found out the conditions they were living in and not being cared for. I made an agreement with my wife to take them back in two weeks and I broke it.

I was separated from my wife - - I am

not exactly sure - - on May 4th or May 5th of last year, of '77. My wife refused money for support for the children. I never sent the children any money at all. From May of '77 to February of '78 I gave my wife $100 for the support of those children. I gave that to her on February 14th of '78 and she refused that in the beginning. After I talked about it, she accepted it. After she thought that we were reaching a friendly understanding, she accepted it, possibly, yes.

(Testimony elicited from the witness through questions of Mr. Harwood in narrative form.)

THE WITNESS: Since this business of support has come up, since my separation I have not had a discussion with my wife as to whether she wanted support. In the beginning, when she told me to leave, I talked to her boy friend at the time on the phone. I do not know the man. He said that he did not want any support from me. He would take care of all the financial needs that they needed. Then she had problems with this boy friend and there were others and I don't know anything about them.

I went out there Christmas. I bought all the Christmas things that were necessary for all the children and her, food and everything at Christmas.

Regardless of my arrangements to bring the children to Texas, today and ever since they have been here they have resided here. I have taken care of them and I have had the control over them and they reside here today.

(Testimony elicited from the witness through questions of Mr. Nelson in narrative form.)

THE WITNESS: My wife and I have never resided within the State of Texas together. None of my children were born in Texas. I have resided in Arizona. The last date that I resided in Arizona was approximately May of '77.